IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 181 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO.

2. To be referred to the Reporter or not? NO.

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.

5. Whether it is to be circulated to the Civil Judge? NO.

PRAVINKUMAR KANTILAL BARDIA JAIN

Versus

STATE OF GUJARAT

Appearance:

MR TS NANAVATI for Petitioner

MR SA PANDYA APP for Respondent No. 1

MR AM MEHTA for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE M.H.KADRI

Date of decision:08/05/98

ORAL JUDGEMENT

1. This appeal is filed by the original accused No.5 in Sessions Case No.19 of 1990,under Section 454 of the Code of Criminal Procedure (to be referred to as " the Code "), against the order passed by the learned

Addl.Sessions Judge, Kheda at Nadiad, below application Exh.1 in Sessions Case No.19/90, whereby the learned Addl.Sessions Judge dismissed the application of the appellant for handing over the muddamal golden RANIES (ingots). By the said order, the learned Addl.Sessions Judge directed that the golden RANY (ingots) and wrist watch be returned to the prosecution witnesses whose golden ornaments and wrist watch were looted.

2. Brief facts leading to the filing of the present appeal are as under :

On 26-6-89 at about 19-20 to 19-45 hours between Mehmadabad and Kanij Railway Station in the train Navjivan Express a dacoity was committed by accused Devidas Somanna Koli, Babu alias Chhota Babu Pyaresha Shaikh, Yusufkhan Najimkhan Pathan, Jafarkhan Namdarkhan Pathan who were original accused Nos. 1 to 4. It is the case of prosecution that in the said dacoity, golden ornaments, wrist watch belonging to the passengers who were travelling in boggy of Navjivan Express were looted. The said golden ornaments were sold by the accused Babusa to the appellant-accused No.5. The said golden ornaments were recovered vide a panchnama from the possession of the appellant. At the conclusion of the trial, original accused Nos. 1 to 3 came to be convicted under Section 395 and 397 of the Indian Penal Code, whereas the appellant came to be acquitted for the offence punishable under Sections 411 and 414 of the Indian Penal Code.

3. The appellant-accused No.5 who had alleged to have purchased golden ornaments from accused No.2 Babusa which were looted from the complainant and his family members filed an application Exh.1 under Section 452 of the Code claiming return of the muddamal-golden ingots which were seized from the appellant during the investigation and in the said application, learned Sessions Judge issued notice to the complainant.

4. After hearing the appellant and the original complainant and the learned Addl.Public Prosecutor, the learned Addl.Sessions Judge by his order dated 17-2-97 dismissed the application of the appellant and directed that the muddamal golden ingots and the wrist watch be handed over to the complainant and witnesses who were looted in the train. The above order is challenged by the appellant by way of filing this appeal under Section 454 of the Code.

5. Learned counsel for the appellant submitted that in an inquiry under Section 454 of the Code, the Court

has not to adjudicate upon the civil right, but it has only to see as to who is the best person entitled for the possession of the muddamal at the conclusion of the inquiry or trial. It is submitted that ordinarily in absence of any exceptional circumstances, the person from whom the muddamal was recovered should be given the possession of the muddamal articles at the conclusion of the trial which culminated into acquittal. It is further submitted by the learned advocate for the appellant that in the present case it is not established by the prosecution that the muddamal ingots which were seized from the appellant were the same which came to be converted into golden ingots from the jewelry which was looted by the accused No.2 and other persons. It is further submitted that the learned Addl.Sessions Judge ought not to have placed reliance on the panchnama by which the golden ingots were seized from the appellant because the panchnama was not proved as the panch witnesses had turned hostile. It is the submission of the learned advocate for the appellant that in absence of any claim lodged by the complainant, the muddamal golden ingots ought to have been handed over to the appellant. It is further submitted by the learned advocate for the appellant that the appellant was bona fide purchaser without notice. Therefore, he was not in illegal possession of the golden ingots and further he was honourably acquitted in Sessions Case No.19/90, and therefore, he is the best person who should have been ordered to have the possession of the golden ingots. In furtherance of this argument, it is submitted that the appellant had purchased the golden ornaments after valuable consideration, and therefore, he had better title, whereas the complainant had no semblance of title and no claim was lodged by the complainant, and therefore, this appeal should be allowed and muddamal-golden ingots should be handed over to the appellant.

6. Learned advocate for the respondent No.2 to 5 submitted that the appellant is not a bona fide purchaser and there was an element of mensrea between the original accused No.2 Babusa and appellant and they entered into an illegal transaction of selling and purchasing of looted ornaments. It is submitted that the confessional statement of accused can be taken into consideration in an inquiry under Section 452 of the Code. It is further submitted that in the statement of the accused recorded under Section 313 of the Code, he had not claimed onwership of the muddamal ingots. It is submitted that original accused No.2 who was convicted and who had sold the looted golden ornaments to the appellant. That the

prosecution had established that the said ornaments were converted by the appellant into golden ingots which was seized from him vide a panchnama during the investigation. That the link was established that the golden ingots was the muddamal which was looted from the complainant and his relatives who were the passengers in the train, and the identity was established. Learned advocate for the respondents further submitted that the appellant has purchased stollen golden articles by paying lesser price then the prevailing marker price, and therefore, it goes to suggest that he was not a bona fide purchaser. It is submitted that the accused No.2 was not the owner of the golden ornaments, and the appellant who is buyer of those ornaments did not get better title, and therefore, learned Addl. Sessions Judge has rightly rejected the claim of the appellant and the appeal should be dismissed.

7. The appellant has claimed return of muddamal golden ingots on the ground that the muddamal property should be returned to the appellant from whose custody the same was seized and he came to be acquitted at the conclusion of the trial. The panchnama Exh.39 and the evidence of Investigating Officer, P.S.I. Jadav prove that the golden ornaments were purchased by the appellant from the original accused No.2 Babusa at a lesser price. The panchnama Exh.39 amply proves that the accused No.2 Babusa has represented before the appellant that he was in dire need of money as he wanted to get his house repaired, and therefore, he was selling ornaments. Admittedly, the appellant had purchased the ornaments at a lesser price then the prevailing marker price. This conduct of the appellant shows that he was not a bona fide purchaser without notice. In the present case, the golden ornaments were sold by the accused No.2 to the present appellant and he was convicted for committing the offence of dacoity in Sessions Case No.19/90. The evidence led before the learned Addl.Sessions Judge in Sessions Case No.19/90 if carefully scanned, proves that the golden ornaments which were looted from the passengers of the Navjivan Express were the same which were sold by the accused no.2 Babusa to the appellant and the appellant had converted the same into golden ingots which were stolen articles. In my view there is a direct link between the muddamal ingots seized and the golden ornaments stollen from the respondents who were travelling in Navjivan Express. In my opinion, the decision rendered in case of Soni Chimanlal Jethalal v. State of Gujarat & Anr. , reported in 1994 (2) G.L.R., 1100 relied on by the learned counsel for the respondents would have no application to the facts of the present

case. In Soni Chimanlal's case (Supra) there was no evidence to furnish the direct link between the seized golden ingots and the stolen gold ornaments and in light of those facts, the golden ingot was ordered to be handed over to the person from whose possession it was seized. In my view, looking to the facts of the case, respondents are the best persons entitled to have the possession of the muddamal.

8. The submission of the learned advocate for the appellant that the appellant was the bona fide purchase without notice, and therefore, he had a better title and he should be handed over the possession of the muddamal article is devoid of any merit. Admittedly, the appellant had purchased the golden ornaments at a lesser price then the prevailing market price from the accused NO.2 Babusa. He had converted the golden ornaments purchased from the accused No.2 into golden ingots which came to be seized from his possession. As per the decision of State of Gujarat v. Nareshbhai Jivanjibhai Harijan and others, reported in 1988 (2) G.L.H. 136, the goods sold by the person who is not the owner, the buyer does not get better title then the seller. It is also ruled in the above decision that bonafide purchaser of stolen goods for value without notice does not acquire good title. In Nareshbhai Jivanbhai Harijan's case (Supra) eventhough the respondent No.3 Ramniklal Jashraj who was a gold smith had purchased the muddamal article by paying full market price to respondent No.1 Nareshbhai Jivanjibhai, it was held that as the purchaser had no title over the stolen articles, the buyer does not get better title even though he had paid full market price and he was a bonafide purchaser without notice. In view of those facts the Division Bench of this Court had ordered that the muddamal articles cannot be handed over to buyer who had no title over it. It is held in the above decision that once it is proved that the buyer had purchased stolen articles even for value, he would not get title over it. The principle laid down in Nareshbhai Jivanbhai's case (Supra) is applicable with all force to the facts of the present case.

9. It is the submission of the learned advocate for the appellant that before the statement of an accused under an inquiry under Section 452 of the Code can be relied in deciding the question about the handing over of the muddamal articles, the alleged statement must have been proved in accordance with law. In support of his submission, learned counsel for the appellant has placed reliance on the decision of Gokuldas v. Mohanlal, reported in 1962 (3) G.L.R., 796. In the above case, the

learned Sessions Judge while holding inquiry under Section 517 of the Code (old Code) had relied on the statement of the accused. The High Court held that the statement of an accused can be used for the purpose of inquiry under Section 517 of the old Code, but such statement must be proved in accordance with law. The High Court remanded the inquiry under Section 517 of the Code to the learned Magistrate to prove the statement of the accused. It is therefore, submitted by the learned counsel for the appellant that unless the statement of the accused is proved, no reliance can be placed on such a statement. That in the present case, the learned Sessions Judge without the statement of the accused being proved had relied on such statement, and therefore, the order deserves to be set aside. In my view, the submission of the learned advocate for the appellant deserves to be rejected. The panchnama Exh.39 was admitted in evidence and was proved wherein the accused No.2 had made statement that he had sold the golden ornaments to the appellant at a lesser price. The statement of the accused was proved by the evidence of P.W.13, Exh.35-the Investigating Officer, P.S.I. Jadav which is abundantly clear from the record. Therefore, the decision of Gokuldas v. Mohanlal as relied on by the learned advocate for the appellant will not be applicable to the facts of this case. It is settled legal principle that in an inquiry under Section 452 of the Code with regard to disposal of the property at the conclusion of the trial, the Court is not to examine the witnesses and hold elaborate inquiry for determination of the question that who is entitled to the muddamal. The Court has to look at the examined facts and the evidence already before it in the main case. It is a general rule that a property seized from the person and is acquitted from the charge, the property should be returned to him. However, it depends on the circumstances of each case and no accused can claim, as of right, that property seized from him should be returned to him. In Meena Ram v. State of H.P. and another reported in 1990 CRI.L.J. 1347, the High Court in the facts and circumstances of that case held that the petitioner who had cut trees not only from his private land, but also from the Government land and during the trial, at any stage, did not claim the ownership of the property. Even during the course of his examination he never explained that the property seized belonged to him. Under the circumstances he has no right to claim the property in question. In the facts of the present case also the appellant had never claimed muddamal articles during the trial and also when the statement came to be recorded under Section 313 of the Code. No evidence was led by the appellant in support of

his claim of return of the muddamal to him. Therefore, in my view, the appellant has no right to claim the muddamal- golden ingots.

10. As a result of the foregoing discussions, this appeal is dismissed.The order of the learned Addl. Sessions Judge of handing over the possession of the muddamal ingots to the respondents is confirmed.

11. At this stage, learned counsel for the appellant has prayed to extend the interim relief which was granted by this Court not to hand over the custody of the muddamal golden ingots to the respondents for a period of three weeks so as to enable the appellant to approach the higher forum. Learned advocate for the respondents has objected this request. However, looking to the facts and circumstances of the case, interim relief granted earlier by this Court is extended till May 29, 1998 with a condition that the same shall not be extended further.

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(mithabhai)